IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL REFERENCE NO.4 OF 2004

1. Mr.Kirit Dahayabhai Shah

2. Vasanti Ramanlal Choksi

3. Meenakshi alias Manjula

4. Hansaben Gunvant Shah

5. Bhavesh Gunvant Shah

6. Hemant Gunvant Shah

7. Kamini Pareshkumar Dhruv

8. Dilip Vanmali Shah

9. Dhanlaxmi Dwarkadas Shah

10.Indumati shantilal Shah

11.Ranjaben Sunilchandra

12.Madhuri Nitinkumar Parekh .. Applicants/
Plaintiffs

v/s.

1. Chetan Kantilal Sheth

2. Smt.Babliben w/o.late Prabhudas
Dahayabhai Shah.

3. Ashok M. Sarogi

4. The State of Maharashtra .. Respondents

Mr.Dinesh Shah i/by Mr.B.M.Purandare in support of the petition.

Mr.A.Y.Sakhare, senior counsel i/by Mr.R.R.Verma for respondent No.3.

Smt.V.R.Bhonsale, Additional Public Prosecutor for the State.

CORAM : R.M. LODHA AND
R.S. MOHITE, JJ.

DATED : 11th April, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

By the order dated 13th August, 2004, the Judge of the City Civil Court charged the noticees (present respondents) that by filing the second suit and not making honest disclosure to the court and taking steps for mutation entries, the noticees have interfered with the due process of judicial proceedings and interfered with the administration of justice. The learned Judge of the City Civil Court by his order made reference under section 15(2) of the Contempt of Courts Act.

2. On 27.10.2004, this court issued notices to the respondents. All the three contemnors have been served. The contemnor No.3 has filed his affidavit.

3. The contemnor No.1-Chetan Kantilal Shah filed S.C.Suit No.40 of 2001 in the Bombay City Civil Court. Amongst the 15 defendants, the first defendant Smt.Babliben is the mother in law of the plaintiff-contemnor No.1. The other defendants being defendant Nos.2 to 14 were said to be claiming themselves as persons interested in the subject property which according to the plaintiffs was gifted to him by the first defendant vide Gift Deed dated 13th August, 1998. Interalia, the prayer made in the suit filed by the contemnor No.1 reads thus-

> "(a) that it be declared that the Deed of Gift being the Gift Deed dated 13th August, 1998 appearing at Exhibit-A to the Plaint is valid in subsistence and binding upon the Defendant No.1 and in view of the said Gift Deed, the Defendants No.2-15 have no right to act contrary to the said Gift Deed in any manner whatsoever.
>
> (b) that this Hon'ble Court be pleased to pass a permanent order and injunction restraining the Defendant No.1 and/or the other Defendants from in any manner acting contrary to the Gift Deed dated 13th August, 1998 appearing at Exhibit-A to the Plaint in any manner whatsoever.

4. The aforesaid suit, however, came to be dismissed for want of prosecution on 2.4.2001. The order dated 2.4.2001 reads thus-

> "Mr.A.M.Saraogi, Advocate for the plaintiff submits that plaintiff wants to withdraw the suit. Prayer allowed. The suit is dismissed for want of prosecution. Notice of Motion No.36/2001 is disposed of accordingly."

5. Immediately thereafter, the second suit came to be filed by the contemnor No.1 for the same reliefs. In paragraph 15 of the second suit, the contemnor No.1-plaintiff averred thus-

> "15. The Plaintiff states that the Defendant No.1 had never challenged the validity of the said Gift Deed by adopting any legal proceedings and despite the same continue threats were being given with the result the Plaintiff approached to the Hon'ble City Civil Court, Bombay by way of S.C.Suit No.40 of 2001 and moved before the Hon'ble Court for grant of urgent reliefs. The Plaintiff states that at the stage of the hearing of the ad-interim reliefs, the Defendant No.1 came forward to settle the matter and accordingly as desired by her, necessary Consent Terms came to be signed and tendered before the Hon'ble Court and before any further orders could be passed the Defendant No.1

> was hospitalized with the result no further steps could be taken in respect of the same. The Plaintiff states that subsequently since the Defendant No.1 was unable to appear before the Hon'ble Court, she admitted the execution of the said Gift Deed by further Affidavits dated 20th March, 2001 as well as 30th March, 2001 and accordingly hereto annexed and marked as Exhibit "F' Colly. are the copies of the said two Affidavits."

6. Then in paragraph 25 of the plaint, the contemnor No.1 averred thus-

> "25. The plaintiff has not filed any other suit pertaining to the said Gift Deed either before this Hon'ble Court or before any other Court nor any Caveat has been served upon the Plaintiff by either of the Defendants save and except the suit referred in the present Plaint which came to be withdrawn as settled out of Court on 2nd April, 2001."

7. The conjoint reading of paragraphs 15 and 25 of the plaint in the second suit leaves no manner of doubt that full disclosure in respect of the earlier suit No.40 of 2001 has been made in the plaint. By no stretch of imagination can it be said that the contemnor No.1 misrepresented to the court or failed in making any disclosure to the court about the earlier suit. The necessary disclosure in respect of the earlier suit No.40 of 2001 having been made by the contemnor No.1 in the second suit, question of interference in the administration of justice or with the due process of judicial proceeding does not arise. We hardly find any justification on the part of the learned Judge of the City Civil Court in making reference

under section 15(2) of the Contempt of Courts Act. The learned Judge seems to have not carefully read paragraphs 15 and 25 of the plaint, else he would not have held that by instituting the second suit, the contemnors have interfered with the due process of judicial proceedings and/or interfered with the administration of justice.

8. In our considered opinion, no case for criminal contempt is made out. The contemnors cannot be said to have interfered with the due process of judicial proceedings and/or interfered with the administration of justice when in the second suit full disclosure regarding the first suit has been made. What is important is not whether the suit was withdrawn because of the compromise or otherwise. This aspect will be examined in the second suit by the Court. What is important is whether in the second suit any false statement or misrepresentation has been made. Having already referred to paragraphs 15 and 25 of the plaint, we find that there was no such false statement or misrepresentation justifying action of criminal contempt against the contemnors.

9. Notices issued to the contemnors are discharged. Reference stands disposed of.

(R.M. LODHA, J.)

(R.S. MOHITE, J.)